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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARCO TULIO VELASQUEZ-  
TRINIDAD,

Defendant.

**Case No.:** CR 19-0456 WHO

**SENTENCING MEMORANDUM**

**Court:** Hon. William H. Orrick III

**Date:** January 23, 2020

**Time:** 1:30 p.m.

## INTRODUCTION

Defendant Marco Tulio Velasquez-Trinidad, who has no prior arrests or criminal convictions of any kind, has demonstrated extraordinary acceptance of responsibility for his offense of selling \$17 worth of crack cocaine to an undercover police officer, and respectfully requests that the Court vary downward under the factors of 18 U.S.C. § 3553(a) from the U.S. Sentencing Guideline Zone B range of 6 to 12 months and impose upon him a sentence of time served (effectively 4 months imprisonment).

## BACKGROUND

Marco Tulio Velasquez-Trinidad was born and raised in a small town in Honduras which lacked running water or electricity. *See* PSR ¶ 30. Mr. Velasquez had to drop out of school at age 10 and help his father in fields in order for his family to have enough food and clothing. *Id.* ¶¶ 30, 38. After serving two compulsory years in the Honduran military, Mr. Velasquez was kidnapped by a gang. *Id.* ¶ 35. Mr. Velasquez suffered a gunshot wound and was left to die in the street. *Id.* Soon thereafter, Mr. Velasquez fled the violence in Honduras and ultimately emigrated to the United States, where he hoped to find employment so he could support his family financially.<sup>1</sup>

Mr. Velasquez was arrested in September 2019 for selling \$17 worth of crack cocaine to an undercover police officer. *Id.* ¶ 6. Following his initial appearance in federal court, Mr. Velasquez promptly pleaded guilty to that charge pursuant to a plea agreement with the government. *Id.* ¶ 3.

## ARGUMENT

Mr. Velasquez agrees with the calculation of the U.S. Probation Officer that the applicable U.S. Sentencing Guideline range is 6 to 12 months, based upon Offense Level 10 and Criminal History Category I (no prior arrests or criminal convictions of any kind), in Zone B of the Sentencing Table. As noted in the Presentence Report, because the applicable

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<sup>1</sup> Due to gangs, Honduras has become one of the most violent countries in the world. *See, e.g.,* Central America Refugee Crisis, UNITED NATIONS REFUGEE AGENCY (available at <https://www.unrefugees.org/emergencies/central-america>).

1 guideline range is in Zone B of the Sentencing Table, the Court may impose a term of  
 2 “probation with a condition or combination of conditions requiring intermittent confinement,  
 3 community confinement, or home detention.” PSR ¶ 47. However, as Mr. Velasquez does not  
 4 have permission to be in this country, he is not eligible for any of those preferable alternatives  
 5 to imprisonment expressly recognized in the guidelines.

6 Instead, under the factors of 18 U.S.C. § 3553(a), Mr. Velasquez respectfully requests  
 7 that the Court vary downward from the low end of the advisory guideline range to a sentence of  
 8 “time served” (effectively four months imprisonment) due to his extraordinary acceptance of  
 9 responsibility, both in terms of his prompt guilty plea, as well as due to the dangerous  
 10 conditions in Honduras which led Mr. Velasquez to seek employment here in the United States  
 11 and to which he will he inevitably be returned. As set forth in the Background section above,  
 12 Mr. Velasquez first came to the United States from Honduras because gang violence eliminated  
 13 any realistic opportunity of gainful employment there. Although this fact does not excuse Mr.  
 14 Velasquez’s criminal conduct, it does provide an important perspective, especially when  
 15 considering the role in creating those violent conditions in Honduras played by the same  
 16 federal government prosecuting him here.

17 Honduras is a dangerous and violent country with one of the highest murder rates in the  
 18 world. *See* Honduras 2018 Crime & Safety Report, OVERSEAS SECURITY ADVISORY  
 19 COUNCIL (available at <https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=23798>)  
 20 [hereinafter 2018 Crime & Safety Report]; *see also* Gangs in Honduras, INSIGHT CRIME  
 21 (available at <https://www.insightcrime.org/images/PDFs/2015/HondurasGangs.pdf>)  
 22 [hereinafter Gangs in Honduras] at 1 (“In 2014, Honduras was considered the most violent  
 23 nation in the world that was not at war.”). Tegucigalpa, the capital of Honduras, and San Pedro  
 24 Sula, the country’s economic center, are two of the ten most dangerous cities in the world.  
 25 Central America Refugee Crisis, UNITED NATIONS REFUGEE AGENCY (available at  
 26 <https://www.unrefugees.org/emergencies/central-america/>); *see also* Gangs in Honduras at 1.  
 27 According to the 2017 State Department Human Rights Report, violence in Honduras includes  
 28 “murder, extortion, kidnapping, torture, human trafficking, intimidation, and other threats . . . .”

1 Country Report of Human Rights Practices for 2017, Honduras, U.S. DEP'T OF STATE,  
 2 BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR (available at  
 3 <https://www.state.gov/documents/organization/277585.pdf>) at 1.

4 Although there are many reasons for the high crime and murder rates, political  
 5 instability and gang activity have contributed to the violence for decades. In the 1980's, the  
 6 United States used Honduras to base American soldiers as they fought against the Nicaraguan  
 7 government. *Id.* Neighboring countries Guatemala and El Salvador, also endured internal wars  
 8 that left the countries unstable. *Id.* Because many were left unemployed and weapons were  
 9 readily available, criminal groups began to form throughout Central America. *Id.* According  
 10 to the Wilson Center, crime generally goes unreported because of corruption, weak law  
 11 enforcement, and active criminal groups. *See* Cristina Eguizábal et al., Crime and Violence in  
 12 Central America's Northern Triangle, WILSON CTR RPT. ON AMERICAS (available at  
 13 [https://www.wilsoncenter.org/sites/default/files/FINAL%20PDF\\_CARSI%20REPORT\\_0.pdf](https://www.wilsoncenter.org/sites/default/files/FINAL%20PDF_CARSI%20REPORT_0.pdf)  
 14 [hereinafter Crime and Violence] at 1-2. In 2009, a military coup ousted Honduras President  
 15 Zelaya making Honduras the first Central American country to undergo a coup in nearly two  
 16 decades, and in 2017, the most recent Honduran presidential election came under question as  
 17 many organizations noticed irregularities with the results. *See* Central America's Violent  
 18 Northern Triangle; *see also* Honduras: Guarantee Credibility of Elections, Protect Free  
 19 Expression, HUMAN RIGHTS WATCH (Dec. 2017) (available at  
 20 [https://www.hrw.org/news/2017/12/11/honduras-guarantee-credibility-elections-protect-free-](https://www.hrw.org/news/2017/12/11/honduras-guarantee-credibility-elections-protect-free-expression)  
 21 [expression](https://www.hrw.org/news/2017/12/11/honduras-guarantee-credibility-elections-protect-free-expression)). Because of the instability and unrest within Honduras, the United States has  
 22 issued warnings cautioning travel there since 2012. *See* 2018 Crime & Safety Report. These  
 23 travel warnings are indicative of the safety concerns in the country and why many are fleeing in  
 24 hopes of creating more sustainable lives.

25 Gang violence is also responsible for the violence throughout Honduras. Since the  
 26 1990's, the United States has played a significant role in Honduran gang culture. *See* Gangs in  
 27 Honduras at 1. Mara Salvatrucha (MS-13), the 18th Street gang (M-18), and Barrio 18, three  
 28 gangs that originated in Los Angeles, are now three of the most prevalent gangs in the country.

1 See Clare Ribando Seelke, Gangs in Central America, CONG. RES. SER., 3 (Aug. 29, 2016)  
 2 (available at <https://fas.org/sgp/crs/row/RL34112.pdf>); see also Gangs in Honduras at 1. These  
 3 gangs expanded into Honduras after the United States passed legislation in 1996 that led to the  
 4 deportation of many undocumented immigrants with criminal records. See Gangs in Honduras  
 5 at 1. Although sources vary as to how many gang members are currently active, estimates  
 6 range between 5,000 to 36,000 members. *Id.* at 7. These U.S.-based gangs, along with local  
 7 gangs, use extortion and violence to control territories and communities. See Crime and  
 8 Violence at 1-2; see also Rocio Cara Labrador & Danielle Renwick, Central America's Violent  
 9 Northern Triangle, COUNCIL ON FOREIGN REL. (June 26, 2018) (available at  
 10 <https://www.cfr.org/backgrounder/central-americas-violent-northern-triangle>) [hereinafter  
 11 Central America's Violent Northern Triangle]. As a result, life in Honduras is tenuous, and  
 12 violence is a primary reason why many people like Mr. Velasquez must flee the country in  
 13 order to find a life where they can be safe and find economic opportunity. See Central  
 14 America's Violent Northern Triangle.

15 Despite these dangers in the country to which he will certainly be deported following  
 16 the resolution of the instant case, Mr. Velasquez promptly pleaded guilty, demonstrating  
 17 extraordinary acceptance of responsibility. As none of the preferable alternatives to  
 18 imprisonment expressly recognized by the U.S. Sentencing Guidelines based upon the Zone B  
 19 guideline range here are available for Mr. Velasquez, the Court should instead vary downward  
 20 under the factors of § 3553(a) to a term of imprisonment of "time served."

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**CONCLUSION**

For the aforementioned reasons, the Court should sentence Mr. Velasquez to a term of imprisonment of “time served,” effectively four months imprisonment.

Respectfully submitted,

Dated: January 15, 2020

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Northern District of California

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